IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13641 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARJUNBHAI AMRITBHAI NAIK

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner

MR HH PATEL AGP for Respondent No. 1

MR VIMAL PATEL for KS NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The brief facts of the present writ petition are

that the petitioner joined services of the respondent no. 2 in the month of January, 1987 as a Peon. For the misconduct alleged against the petitioner, a chargesheet was served upon him and after conducting the enquiry ex parte, the respondent no. 2 terminated the services of the petitioner on 22nd April, 1994. Feeling aggrieved and dissatisfied by the said Order of termination, the petitioner herein has raised an industrial dispute under Section 2 (A) of the Industrial Disputes Act, 1947.

3. During the course of hearing before the Respondent No. 1, the respective parties have filed their objections and respondent no. 2 has mainly contended before the respondent no. 1 that such an industrial dispute cannot be entertained as petitioner is having alternative efficacious remedy available before the Education Tribunal, and on earlier two occasions, the petitioner had already availed such a remedy, and therefore, the Reference should not be made to the Labour Court for adjudication. The second contention was made that the respondent no. 2 being a Trust running an Education Institution, it is not an `Industry' within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947 [hereinafter referred to as, `the Act']. After considering the respective submissions, the respondent no. 1 had decided that one fact that the petitioner is having alternative efficacious remedy before the Industrial Tribunal and on two occasions, the petitioner had already approached the Education Tribunal, and therefore, due to availability of alternative efficacious remedy before the Education Tribunal, the said complaint filed by the petitioner has been rejected on the ground that this complaint cannot be entertained by the respondent no. 1 and it is also not found fit to be referred to for adjudication to the Labour Court. Thereafter, the petitioner has once again approached the respondent no. 1 by giving application dated 17th December, 1994 to review his own order. The said review application was also not considered by the respondent no. 1. Hence, the present writ petition.

4. In this petition, on 23rd January, 1996, rule was issued, making it returnable on 26th February, 1996. Affidavit-in-reply has been filed by the respondent no. 2 contending mainly that this petition is not maintainable under Article 226 of the Constitution of India. It has also been contended that only the Education Tribunal has jurisdiction to entertain the application and try the matter, and the Labour Court has no jurisdiction, and therefore, since the respondent no. 2 is an Educational Institution, the same is not covered

by the definition of Section 2 (j) of the Industrial Disputes Act. Thus, the order impugned is just, proper and legal and does not require any interference at the hands of this Court.

5. I have heard the learned advocates - Mr. Pathak, Mr. H.H Patel and Mr. Vimal Patel appearing on behalf of the respective sides.

6. In the present petition, the main question is that the respondent no. 1 has decided that petitioner having alternative remedy and therefore, his complaint has not been entertained and decided not to refer for adjudication to the Labour Court. For the said decision, the respondent no. 1 has considered two cases filed by the petitioner before the Education Tribunal in respect to suspension and other reliefs prior to his dismissal, being 490 of 1994 and 624 of 1993. According to Mr. Pathak, the two cases which were filed by the petitioner does not relate to the decision of the petition. Mr. Pathak further submitted that against the dismissal order of the petitioner, the petitioner has not approached the Education Tribunal and straightway for the first time he had approached the respondent no. 1, and therefore, the respondent no. 1 has no jurisdiction to say no to the petitioner for entertaining the complaint filed by the petitioner under Section 2 (A) of the Industrial Disputes Act. According to Mr. Pathak, the respondent no. 2 is an `industry' within the meaning of Section 2 (j) of the Industrial Disputes Act. In support of his submission, he has relied upon the decision reported in 1988 (SC) p-1700. He further submitted that petitioner was working as a Peon, and therefore, he is also a `workman' within the meaning of Section 2 (s) of the Act. Mr. Pathak also contended that a challenge to the dismissal order amounts to a `industrial dispute' within the meaning of Section 2 (k) of the I.D Act, and therefore, all the three conditions have been satisfied by the petitioner-workman. In light of these contentions, Mr. Pathak contended that the respondent no. 1 has committed error while coming to the conclusion that the petitioner is having alternative efficacious remedy under the I.D Act and the said complaint has not been entertained and decided not to refer for adjudication. Mr. Pathak further submitted that under the statutory provisions, a workman may have two remedies but it is open to him to approach either one and choice is left with the workman. In support of this contention, he has relied upon the decision of this Court in the matter of Gujarat Mazdoor Panchayat v. State of Gujarat & Ors. [1991 (2) GLR 1354] and also submitted that different in jurisdiction

between Education Tribunal & Labour Court. He submitted that the Labour Court has power under Section 11-A of the Industrial Disputes Act wherein Labour Court can modify the punishment and Education Tribunal has no such power to modify the punishment. Therefore, the workman has choice to approach the particular forum and that option had been exercised but the respondent no. 1 has rejected the said request which amounts to a clear, apparent error committed by the respondent no. 1. Mr. Pathak also relied upon one judgment of the Madhya Pradesh High Court reported in 1993 (2) LLJ 335 wherein the Division Bench has held that when two remedies viz., under the I.D Act or Payment of Wages Act, are available to a workman, then choice has to be given to him to choose any one forum.

Learned advocate Mr. Vimal Patel has submitted that the respondent no. 2 is not an `industry'. He submitted that the respondent no. 2 is an Educational Institute and prior to his dismissal, the petitioner had already, on two occasions, approached the Education Tribunal, and therefore, according to him, the Labour Court has no jurisdiction to decide such issue and similarly the respondent no. 1 has rightly decided not to entertain the said application filed by the petitioner.

Learned AGP Mr. H.H Patel appearing on behalf of the respondent no. 1 has supported the findings given by the respondent no. 1 in rejecting the application preferred by the petitioner.

I have considered the submissions of all the learned advocates. The fact remains that the jurisdiction of respondent no. 1 while entertaining the complaint under Section 2 (A) of the Industrial Disputes Act is very limited. The respondent no. 1 has no power to adjudicate any issue or dispute between the parties. The respondent no. 1 has only power to pass an administrative order, after receiving the complaint under Section 2 (A) of the I.D Act and prima facie has to consider whether an industrial dispute exist between the parties or not. Thus, without going into the merits and without deciding the merits of the matter, it is the duty of the respondent no. 1 to refer such industrial dispute to the Labour Court under Section 10 Sub-Clause (1) of the Industrial Disputes Act, 1947. According to my opinion, the respondent no. 1 has committed error in coming to the conclusion not to entertain the complaint filed by the petitioner only on the ground that petitioner is having alternative effective remedy under the Education Tribunals Act. This view is not proper

because it is the right of the petitioner to approach any forum and respondent no. 1 cannot compel the petitioner to approach the Education Tribunal, under the provisions of the Education Tribunals Act. Such a view is not permissible under the Law to the respondent no. 1. I am not deciding this matter on merits or whether the respondent no. 2 is covered within the meaning of Section 2 (j) or not whether the petitioner is a `workman' or not and whether the dispute raised by the petitioner is an industrial dispute or not. Without giving any findings on merit, I am examining the order passed by the respondent no. 1 whether he has committed any error or not. According to my opinion, the respondent no. 1 has committed gross error which is found apparent on the face of the record that not to entertain the complaint submitted by the petitioner under Section 2 (A) of the I.D. Act challenging the dismissal order passed by the respondent no. 2 against the petitioner dated 22nd April, 1994, the respondent no. 1 has committed error in not referring the said matter for adjudication to the Labour Court under Section 10 sub-Clause (1) of the I.D Act. Normally, a workman may have a right under two statutory forums of two different Acts but ultimately the choice is left with the workman to approach a particular forum which gives better relief to the workman. Therefore, such a choice cannot be curtailed by the respondent no. 1 in coming to the conclusion that earlier on two occasions, the very petitioner had approached the Education Tribunal prior to the dismissal. Therefore, such a view is erroneous and contrary to the settled principles, and according to my opinion, this petition is required to be allowed.

In the result, the order passed by the respondent no. 1 dated 30th November, 1994 [Annexure-B to the petition] is hereby quashed and set-aside. Rule is made absolute to that extent. It is directed that respondent no. 1 shall entertain the complaint filed by the petitioner under Section 2 (A) of the Industrial Disputes Act challenging the dismissal order dated 22nd April, 1994, and shall refer the said dispute for adjudication to the Labour Court under Section 10 (1) of the I.D Act. The said exercise shall be completed within a period of two months from the date of receipt of the writ of this Court. Office is directed to issue writ immediately. There shall be no order as to costs.

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Prakash*